

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 218/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013
In the matter of

M/s. Shresth Tech Solutions Limited,
Sonawala Building, 25 Bank Street, Fort,
Mumbai - 400001.

.... Petitioner/Applicant Company

Order delivered on: 11.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

1. A. W. Ansari, Advocate, Authorised Representative for the Petitioner/Applicant.
2. Hiral Mehta, Authorised Representative for the Petitioner/Applicant.
3. Namrata Pai, Authorised Representative for the Petitioner/Applicant.

For the Respondent :

Mr. Neelambuj, CP – RoC, Mumbai

Per: M.K. Shrawat, Member (J)

ORDER

Defaulters Herein:

- 1) M/s. Shresth Tech Solutions Limited
- 2) Mr. Vivek Shetty – Director
- 3) Mr. Dheroor M. Shetty – Director

Section Violated:

S. 159 of the Companies Act, 1956.

Punishment Provided Under:

S. 162 of the Companies Act, 1956.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 12th July, 2016 and the same has been forwarded along with the RoC Report to NCLT, Mumbai Bench on 13th June, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for non-filing of its Annual Return for the financial year 31st March, 2000 with the MCA as stipulated time prescribed in the Section 148 of the Companies Act, 2013.
2. Pursuant to Section 159 of the Companies Act, 1956 a company having a share capital shall, within (sixty) days from the day on which the annual general meeting is held, prepare and file its Annual Return with the Registrar. Hence, the Applicant Company committed the default under the provisions of Section 159 of the Companies Act, 1956 and the same is punishable u/s. 162 of the Companies Act, 1956.

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3. The Ld. RoC has also reported that the Applicant Company has made the default good by filling its Annual Return for the year 31st March, 2000 on 7th March, 2003 vide Receipt No. 237158. However, the applicants claimed that the Compounding Application is filed, so as to put the matter to rest.

Facts of the Case:

4. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 159 of the Companies Act, 1956, the Applicant and officers in default has committed default as follows:-
 - a. *The Company was incorporated on 24th May, 1999 under the name and style as SM Holding Limited. Subsequently the name was change from SM Holding Limited to Saksham Holding Limited pursuant to Certificate issued by the RoC on 23rd March, 2004. It is further stated that the name of the Company was further changed from Saksham Holding Limited to Shresth Tech Solutions Limited vide fresh certificate of incorporation issued by the RoC, Mumbai on 10th April, 2013.*
 - b. *For non-filling of Annual Return for the year ended 31st March, 2000 for the Annual General Meeting held on 30th September, 2000 which is to be filed within 60 days i.e. upto 29th November 2000 the default lead to the Ld. RoC to file complaint against the Company and its Directors before the Hon'ble Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai.*
 - c. *The Company had submitted its Application for Compounding under section 621-A for the violation of section 159(1) of the Companies Act, by submitting an application dated 11th July, 2012.*
 - d. *Then the matter came up for hearing before the Hon'ble Company Law Board Bench at Mumbai, the Advocate appearing on behalf of the Applicant Company had noticed that the Company Application contains the name of the Company and 9 Directors, and whereas the complaint indicates the name of company and 3 Directors as accused and not company and 9 Directors as mentioned in company application dated 11th July, 2012. Therefore, the advocate appearing on behalf of the applicant company and 3 directors submitted for withdrawal of the company application on the ground that some mistakes have been notice in the previous company application which need to be amended/rectified. Hence, the pending company application with the Company Law Board was sought to be withdrawn with liberty to file fresh Compounding Application.*
 - e. *As a matter of good governance the Board of Directors of the company in its meeting held on 30th March, 2016 decided to file fresh Compounding Application before the Hon'ble Company Law Board through RoC, Mumbai.*
5. From the side of the Applicants, Learned Advocate A. W. Ansari and the authorised representatives of the company Hiral Mehta and Namrata Pai had appeared and explained that, the contravention of S. 159 had occurred because the non-filing of Annual Return for the financial year ended on 31st March, 2000.

6. The Representative for the applicants further submitted that, due to unavoidable circumstances the Applicants/defaulters had violated the provisions of S. 159 of the Companies Act, 1956. Although, the Applicants/defaulters was willing to comply with those provisions *bona fide*ly. Ld. Representative of the Applicants/defaulters also stated that the afore stated violation was unintentional and without any wilful or *mala fide intention*. Further the Ld. Representative of the Applicants/defaulters also submitted that, the default has been made good by filing Annual Return for the Financial Year ended on 31st March, 2000 on 7th March, 2003. The Report of the RoC also affirms the same.
7. By going through the above submissions this Bench came to conclusion that, there happened to be violation of the provision under Section 159 of the Companies Act, 1956. And the said offence is punishable under Section 162 of the Companies Act, 1956. The relevant section is as follows:

"162. PENALTY AND INTERPRETATION (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161. The company, and every officer of the company who is in default, shall be punishable with fine which may extend to 1 [five hundred] rupees for every day during which the default continues. (2) For the purposes of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act."

This Bench has gone through the Application and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. Representative for the Applicants/defaulters at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 159 which is punishable under Section 162 of the Companies Act, 1956, merits consideration; especially when the default had not continued rather made good as on 7th March, 2003 by filing Annual Returns.

8. On examination of the circumstances as discussed above, a Compounding Amount/Sum of Rs. 5,000/- (Rs. Five Thousand only) by each applicant/defaulters [i.e. total Rs. 15000/- (Rs Fifteen Thousand only)] herein, stated in the Defaulters list, shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai".
9. This Compounding Application bearing CP No. 218/441/NCLT/MB/MAH/2017 is, therefore, disposed of on the terms directed above with a rider that the payment of the fine imposed be made within 15 days on receipt of this order. Needless to mention, the offence shall stand compounded subject to the remittance of the fine imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall give effect to this order.
10. Ordered accordingly.

Sd/-

Bhaskar Pantula Mohan
Member (J)

Sd/-

M.K. Shrawat
Member(J)

Dated: 11th January, 2018